

## HOUSE BILL NO. 459

INTRODUCED BY D. MOOD, YOUNKIN, BECK, BERRY, BITNEY, BRUEGGEMAN, CRISMORE,  
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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ENVIRONMENTAL POLICY ACT;  
PROVIDING CRITERIA FOR THE ANALYSIS OF PROJECT ALTERNATIVES; PROVIDING DEFINITIONS; AND  
AMENDING SECTION 75-1-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-1-201, MCA, is amended to read:

**"75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes  
and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in  
accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure:

(A) the integrated use of the natural and social sciences and the environmental design arts in  
planning and in decisionmaking that may have an impact on the human environment; AND THAT WILL ENSURE

(B) THAT IN ANY ENVIRONMENTAL REVIEW UNDER THIS PART THAT IS NOT SUBJECT TO SUBSECTION (1)(B)(IV),  
WHEN AN AGENCY CONSIDERS ALTERNATIVES, THE ALTERNATIVE ANALYSIS WILL BE IN COMPLIANCE WITH THE PROVISIONS

OF SUBSECTION (1)(B)(IV)(C) SUBSECTIONS (1)(B)(IV)(C)(I) THROUGH (1)(B)(IV)(C)(III) AND, IF REQUESTED BY THE  
PROJECT SPONSOR OR IF DETERMINED BY THE AGENCY TO BE NECESSARY, SUBSECTION (1)(B)(IV)(C)(IV);

(ii) identify and develop methods and procedures that will ensure that presently unquantified  
environmental amenities and values may be given appropriate consideration in decisionmaking, along with  
economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions  
that may impact the human environment are evaluated for regulatory restrictions on private property, as  
provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action. An analysis of any alternative included in the environmental review must comply with the following criteria:

(I) any alternative proposed must be reasonable, in that the alternative must be achievable under current technology and the alternative must be economically feasible AS DETERMINED SOLELY BY THE ECONOMIC VIABILITY FOR SIMILAR PROJECTS HAVING SIMILAR CONDITIONS AND PHYSICAL LOCATIONS AND DETERMINED WITHOUT REGARD TO THE ECONOMIC STRENGTH OF THE SPECIFIC PROJECT SPONSOR ~~for the project sponsor;~~

(II) the agency proposing the alternative shall consult with the project sponsor regarding any proposed alternative, and the agency shall give due weight and consideration to the project sponsor's comments regarding the proposed alternative;

(III) if the project sponsor believes that an alternative is not reasonable as provided in subsection (1)(b)(iv)(C)(I), the project sponsor may request a review by the appropriate board, if any, of the agency's determination regarding the reasonableness of the alternative. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue. The agency may not charge the project sponsor for any of its activities associated with any appeal REVIEW under this section. [THE PERIOD OF TIME BETWEEN THE REQUEST FOR A REVIEW AND COMPLETION OF A REVIEW UNDER THIS SUBSECTION MAY NOT BE INCLUDED FOR THE PURPOSES OF DETERMINING COMPLIANCE WITH THE TIME LIMITS ESTABLISHED FOR ENVIRONMENTAL REVIEW IN [SECTION 1 OF SENATE BILL NO. 377]].

(IV) the agency shall complete a meaningful no-action alternative analysis. The no-action alternative analysis must include the projected beneficial and adverse environmental, social, and economic impact of the project's noncompletion.

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance

1 and enhancement of long-term productivity; ~~and~~

2 (F) any irreversible and irretrievable commitments of resources that would be involved in the  
3 proposed action if it is implemented; and

4 (G) the details of the beneficial aspects of the proposed project, both short-term and long-term,  
5 and the economic advantages and disadvantages of the proposal;

6 (v) in accordance with the criteria set forth in subsection (1)(b)(iv)(C), study, develop, and describe  
7 appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts  
8 concerning alternative uses of available resources;

9 (vi) recognize the national and long-range character of environmental problems and, when  
10 consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs  
11 designed to maximize national cooperation in anticipating and preventing a decline in the quality of the  
12 world environment;

13 (vii) make available to counties, municipalities, institutions, and individuals advice and information  
14 useful in restoring, maintaining, and enhancing the quality of the environment;

15 (viii) initiate and use ecological information in the planning and development of resource-oriented  
16 projects; and

17 (ix) assist the environmental quality council established by 5-16-101;

18 (c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible  
19 state official shall consult with and obtain the comments of any state agency that has jurisdiction by law  
20 or special expertise with respect to any environmental impact involved. The responsible state official shall  
21 also consult with and obtain comments from any state agency with respect to any regulation of private  
22 property involved. Copies of the statement and the comments and views of the appropriate state, federal,  
23 and local agencies that are authorized to develop and enforce environmental standards must be made  
24 available to the governor, the environmental quality council, and the public and must accompany the  
25 proposal through the existing agency review processes.

26 (d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement  
27 for use or permission to act by an agency, either singly or in combination with other state agencies, does  
28 not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the  
29 entitlement or unless otherwise provided by law.

30 (2) The department of public service regulation, in the exercise of its regulatory authority over

1 rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts  
2 1 through 3.

3 (3) (a) In any action challenging or seeking review of an agency's decision that a statement  
4 pursuant to subsection (1)(b)(iv) is not required or that the statement is inadequate, the burden of proof  
5 is on the person challenging the decision. Except as provided in subsection (3)(b), in a challenge to the  
6 adequacy of a statement, a court may not consider any issue or evidence that was not first presented to  
7 the agency for the agency's consideration prior to the agency's decision. A court may not set aside the  
8 agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary  
9 or capricious or not in compliance with law.

10 (b) When new, material, and significant evidence is presented to the district court that had not  
11 previously been presented to the agency for its consideration, the district court shall remand the new  
12 evidence back to the agency for the agency's consideration and an opportunity to modify its findings of  
13 fact and administrative decision before the district court considers the evidence within the administrative  
14 record under review. Immaterial or insignificant evidence may not be remanded to the agency. The district  
15 court shall review the agency's findings and decision to determine whether they are supported by  
16 substantial, credible evidence within the administrative record under review.

17 (4) TO THE EXTENT THAT THE REQUIREMENTS OF SUBSECTIONS (1)(B)(IV)(C)(I) AND (1)(B)(IV)(C)(III) ARE  
18 INCONSISTENT WITH FEDERAL REQUIREMENTS, THE REQUIREMENTS OF SUBSECTIONS (1)(B)(IV)(C)(I) AND (1)(B)(IV)(C)(III)  
19 DO NOT APPLY TO A DETAILED STATEMENT AN ENVIRONMENTAL REVIEW THAT IS BEING PREPARED BY A STATE AGENCY  
20 PURSUANT TO THIS PART AND A FEDERAL AGENCY PURSUANT TO THE NATIONAL ENVIRONMENTAL POLICY ACT OR TO A  
21 DETAILED STATEMENT AN ENVIRONMENTAL REVIEW THAT IS BEING PREPARED BY A STATE AGENCY TO COMPLY WITH THE  
22 REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT."

23

24 NEW SECTION. **Section 2. Definitions.** For the purposes of this part, the following definitions  
25 apply:

26 (1) "Appropriate board" means, for administrative action taken under this part by the:

27 (a) department of environmental quality, the board of environmental review, as provided for in  
28 2-15-3502;

29 (b) department of fish, wildlife, and parks, the fish, wildlife, and parks commission, as provided  
30 for in 2-15-3402;

(c) department of transportation, the transportation commission, as provided for in 2-15-2502;

(d) department of natural resources and conservation for state trust land issues, the board of land commissioners, as provided for in Article X, section 4, of the Montana constitution;

(e) department of natural resources and conservation for oil and gas issues, the board of oil and gas conservation, as provided for in 2-15-3303; and

(f) department of livestock, the board of livestock, as provided for in 2-15-3102.

(2) "Environmental review" means any environmental assessment, environmental impact statement, or other written analysis by a state agency of a proposed action to determine, examine, or document the effects and impacts of the proposed action on the quality of the human and physical environment as required under this part.

(3) "Project sponsor" means any applicant, owner, operator, state agency, or other entity that is proposing an action that requires an environmental review. If the action involves state trust lands, the term also includes each INSTITUTIONAL beneficiary of any trust AS DESCRIBED IN THE ENABLING ACT OF CONGRESS (APPROVED FEBRUARY 22, 1899, 25 STAT. 676), AS AMENDED, THE MORRILL ACT OF 1862 (7 U.S.C. 301 THROUGH 308), AND THE MORRILL ACT OF 1890 (7 U.S.C. 321 THROUGH 328).

**NEW SECTION. Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 75, chapter 1, part 2, and the provisions of Title 75, chapter 1, part 2, apply to [section 2].

**NEW SECTION. SECTION 4. COORDINATION INSTRUCTION.** (1) IF SENATE BILL NO. 377 IS NOT PASSED AND APPROVED, THEN THE BRACKETED LANGUAGE IN [SECTION 1(1) OF THIS ACT] THAT AMENDS 75-1-201 IS VOID.

(2) IF SENATE BILL NO. 377 IS PASSED AND APPROVED AND IF IT DOES NOT ESTABLISH TIME LIMITS FOR ENVIRONMENTAL REVIEW, THEN THE BRACKETED LANGUAGE IN [SECTION 1(1) OF THIS ACT] THAT AMENDS 75-1-201 IS VOID.

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